

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MICHAEL MCCARTHY, *et al.*,

Plaintiffs,

v.

CHARLES D. BAKER, *et al.*,

Defendants.

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)
) CIVIL ACTION
) NO.
) 1:20-cv-10701-DPW
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**DEFENDANTS’ MOTION FOR LEAVE TO FILE A CONDITIONAL REPLY BRIEF
IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT**

Defendants seek leave to file the attached Reply Brief in support of their Cross-Motion for Summary Judgment on a conditional basis in this matter. In support thereof they allege as follows:

1. This Court’s most recent Scheduling Order, ECF No. 132, required that any brief in opposition to the Defendants’ Cross-Motion for Summary Judgment be filed by Monday, November 9, 2020. The Order likewise required that the defendants file any reply brief in support of their Cross-Motion for Summary Judgment by Monday, November 16, 2020.

2. On Monday, November 16, the plaintiffs filed a late brief in opposition to the Defendants’ Cross-Motion for Summary Judgment, together with other opposition papers, without seeking or receiving leave of court. *See* ECF Doc. Nos. 133-135.

3. The next day, the defendants moved to strike the plaintiffs’ late-filed opposition brief and related filings. *See* ECF Doc. No. 136. Because the plaintiffs filed their opposition brief at 11:45 P.M. on November 16—the day that, under this Court’s Scheduling Order, the defendants’ reply brief was due—the defendants could not comply with the deadline for their reply brief set forth in the Scheduling Order.

4. If this Court were to deny the defendants' motion to strike, under Local Rule 56.1, "[u]nless the Court orders otherwise, the moving party may file a reply brief within 14 days after the response is served." D. Mass. Local R. 56.1. Fourteen days after the filing of plaintiffs' tardy opposition brief is today—November 30, 2020.

5. Because it is unclear whether plaintiffs' papers will be struck, in an excess of caution, the defendants conditionally seek leave to file the attached Reply Brief, which is timely under Local Rule 56.1.

6. The proposed Reply Brief is being offered to protect defendants' rights in the event that plaintiffs' responsive pleadings are not struck. Plaintiffs will not be prejudiced if this motion is allowed.

Wherefore, defendants request that the Court grant leave for them to file the attached Reply Brief on a conditional basis pending a ruling on their Motion to Strike.

Respectfully submitted,

CHARLES BAKER, Governor of the Commonwealth of Massachusetts; MONICA BHAREL, Commissioner of the Department of Public Health; and JAMISON GAGNON, Commissioner of the Department of Criminal Justice Information Services,

By their attorney,

MAURA HEALEY
ATTORNEY GENERAL

/s/ Julia E. Kobick

Julia E. Kobick (BBO No. 680194)

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Dated: November 30, 2020

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(a)(2)

I certify that, on November 30, 2020, I conferred with counsel for the plaintiffs and the plaintiffs do not oppose this motion.

/s/ Julia E. Kobick

Julia E. Kobick
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that, on November 30, 2020, this document, filed through the Court's ECF system, will be sent electronically to registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Julia E. Kobick

Julia E. Kobick
Assistant Attorney General